

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: September 19, 2001
TIME: 9:00 am
PLACE: DLNR Board Room
Kalanimoku Bldg.

Chairperson Gilbert S. Coloma-Agaran called the meeting of the Commission on Water Resource Management to order at 9:13 a.m.

The following were in attendance:

MEMBERS: Mr. Gilbert S. Coloma-Agaran, Dr. Bruce Anderson, Mr. Robert Giraldo, Mr. Brian Nishida, Mr. Herbert Richards, Jr.

STAFF: Linnel Nishioka, Roy Hardy, Ed Sakoda, Eric Hirano, Dean Nakano, Ryan Imata, Glenn Bauer, Lenore Nakama

EXCUSED: Mr. David Nobriga

COUNSEL: Edsel Yamada

OTHERS: Tom Nance, Scott Matsuura, Gordon Tribble, Steve Montgomery, Barry Hill, Chester Lao, Yvonne Izu, Dan Lum, Jim Anthony, Theresa Dawson, Eric Kadooka, Tim Lui Kwan, Jean Campbell, Felix Lintiac, Barry Usagawa, Mike Gibson

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties.

1. Minutes of the August 15, 2001 meeting

MOTION: (RICHARDS/ANDERSON)
To approve the minutes.
UNANIMOUSLY APPROVED.

2. Old Business/Announcements by Deputy Director Linnel Nishioka

On August 29 and 30, meetings were held with staff of Senator Daniel Inouye's office and the Bureau of Reclamation to discuss additional funding opportunities for the Hawaii drought program.

Deputy Director Nishioka announced to the Commission that staff, Lenore Nakama, has been recognized as one of the top three employee of the year in the Department. Lenore has proven to be a very conscientious and dedicated employee. She has gone on numerous site visits, prepares submittals, assisted in administrative personnel matters and at this time she is providing assistance to the Planning Branch in addition to her normal Regulation Branch duties.

3. USGS Briefing: USGS/CWRM Cooperative Agreement – Ground-water Conditions Statewide

Mr. Gordon Tribble of USGS went over the functions of USGS and how they operate. He talked about the data network, on-line resources data distribution, hydrological considerations relevant to ground water in the State and talked about the recent data from the Lihue Basin on Kauai and the Iao Aquifer on Maui. He concluded with a brief overview of some of their ongoing studies.

The mission of the Water Resources Division is principally to provide information to facilitate the management and protection of water resources. Information is also provided on hydrologic hazards. The main operating guidelines are to get information out that is reliable, impartial and timely.

The main water resource issues are stream flow and ground water. A Water Quality Program is set up on Oahu.

To provide information, the data is compiled into a book annually. A web page will also be created to disseminate the same information. This is a long-term goal that will be available in the near future.

Some examples of record low water levels in Hawaii are the Lihue area on Kauai, Honolulu, Iao Aquifer on Maui and the North Kohala area on the Big Island.

The USGS and Commission staff will try to develop estimates of recharge cooperatively. There is apparent need for better assessments of ground-water recharge. Some efforts have been developed in applying instrumentation to better measure evapotranspiration and fog condensation and improve basic data collection.

USGS created a demonstration model that shows changes in the Pearl Harbor aquifer. It is a three-dimensional simulation of variable salinity of ground water.

Dr. Jim Anthony of Hawaii Laieikawai Association and the Waiahole Waikane Community Association stated that he feels that USGS needs to make the vital connection in human affairs between data collection and policy. There needs to be more public discussions on ground water, watershed protection, streams and ecosystems.

4. CWRM Briefing: Update on the Hawaii Water Plan

Commission staff Dean Nakano updated the Commission on the status of the Hawaii Water Plan (HWP).

The Commission adopted the initial Water Plan in 1990. It was subsequently updated in 1992, but remains in draft form and was never finalized for adoption by the Commission. Several reasons why the plan was never adopted was because the 1992 draft was still fragmented, lacked needed coordination between the various components of the plan, and was not clear regarding agency jurisdictional responsibilities for updating the HWP.

To address these concerns, the Commission adopted the Statewide Framework for Updating the HWP to achieve more integration between plan components and to establish clearer guidelines. Despite having a framework in place, agencies are still faced with a number of continuing challenges that include more comprehensive planning, integration, and additional funding.

The final draft of the State Water Projects Plan was completed last year and Commission authorized public hearings to be held on the different islands. Hearings will be scheduled pending further updating of the plan.

Mr. Nakano reported on the partial update of the Water Resource Protection Plan (WRPP). Insufficient funds were provided to undertake a comprehensive update of the WRPP. Based upon available funding, staff prioritized elements of the Plan that would be undertaken during this phase.

Future efforts to complete the update of the WRPP include implementation of a Statewide ground and surface water monitoring program, continued monitoring data collection and analyses, additional field verification and inspections, and development of a State water conservation plan and completion of Phase 2 of the Hawaii Drought Plan. Plans are to schedule briefings by each of the Counties on the status of their water use and development plans, and to continue efforts to seek State and Federal funding to complete the other components of the HWP (such as the Water Quality Plan and Agricultural Water Use and Development Plan).

Dr. Jim Anthony stated that he feels that the Commission needs to be assertive and proactive to accomplish the tasks that Mr. Nakano emphasized. He spoke about the Hamakua Ditch and the work that has taken so long to complete. Dr. Anthony is also concerned about the large amount of water the military is consuming. He stated that the inequities of large-scale agriculture and the military paying so little water fees needs to be looked into.

5. The Estate of James Campbell APPLICATION FOR A WATER USE PERMIT, Kii Wildlife Wells 1 through 3 (Well No. 4157-05 to -07), TMK 5-6-002: 001, Future (Wetland Habitat) Use for 1.000 mgd, Koolauloa Ground Water Management Area, Oahu

PRESENTATION OF SUBMITTAL: Ryan Imata

AMENDED RECOMMENDATIONS:

Staff recommends that the Commission:

1. Approve the issuance of Water Use Permit No. 592 to The Estate of James Campbell for the reasonable and beneficial use of 1.000 million gallons per day of potable water for Wetland Habitat from the Kii Wildlife Wells 1 through 3 (Well No. 4157-05 to -07), subject to the standard water use permit conditions listed in Attachment B and the following special conditions:
 - a. Should an alternate permanent source of water be found for this use, then the Commission reserves the right to revoke this permit, after a hearing.
 - ~~b. This interim water use permit shall cease to become interim and shall be subject to Haw. Rev. Stat. §174C-55 upon administrative review of the quantity within 5 years, provided that all conditions of the use (including the review of the quantity which shall not be greater than the amount initially granted) remain the same.~~
 - b. In the event that the tax map key at the location of the water use is changed, the permittee shall notify the Commission in writing of the tax map key change within thirty (30) days after the permittee receives notice of the tax map key change.
2. Revoke water use permits 240, 241 and 242 for the Kii Wildlife Wells 1 through 3 (4157-05, -06 and -07, respectively), which have been replaced by WUP No. 592.

Correction to Attachment A, second page, line 2 should read August 27, 2001 and September 3, 2001 not August 27, 2001.

MOTION: (GIRALD/RICHARDS)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED.

6. Hamakua Energy Partners AFTER-THE-FACT PUMP INSTALLATION PERMIT APPLICATION, Enserch 1 Well (Well No. 6528-02), Honokaa, Hawaii

PRESENTATION OF SUBMITTAL: Ryan Imata

RECOMMENDATIONS:

That the Commission:

- A. Find Hamakua Energy Partners in violation of HAR §13-168-12(a).

- B. Impose a fine of \$18,000 on the applicant, Hamakua Energy Partners as summarized in Exhibit 5 payable within 30 days.
- C. Approve the issuance of an after-the-fact Pump Installation Permit for the Enserch #1 Well (Well No. 6528-02) after the fine is paid, subject to standard conditions in Exhibit 6, and the following special conditions:
 - 1. The well should not be used for drinking water unless it is properly tested and treated.
 - 2. If potable water is used to supply both domestic and irrigation purposes in a single system, the permittee shall eliminate cross-connections and backflow connections by physically separating potable and non-potable systems by an air gap or an approved backflow preventer, and by clearly labeling all non-potable spigots with warning signs to prevent inadvertent consumption of non-potable water.
- D. Suspend any current, pending or future applications by the applicant until the fines are paid and the applicant completes the permit process for this well.

At 11:35 am the Commission took a 10-minute recess. They reconvened at 11:45 am. No decision was made on Item 6 at this time. Ryan Imata then presented Item 7 to the Commission.

(Note: The Commission heard both Items 6 and 7 before making a decision.)

MOTION: (RICHARDS/GIRALD)

To approve the submittal.

UNANIMOUSLY APPROVED.

7. Hamakua Energy Partners AFTER-THE-FACT PUMP INSTALLATION PERMIT APPLICATION, Enserch 2 Well (Well No. 6528-03), Honokaa, Hawaii

PRESENTATION OF SUBMITTAL: Ryan Imata

AMENDED RECOMMENDATIONS:

That the Commission:

- A. Find the Hamakua Energy Partners in violation of HAR §13-168-12(a).
- B. Impose a fine of ~~\$21,000~~ \$14,000 on Hamakua Energy Partners as summarized in Exhibit 6, payable within 30 days.

- C. Approve the issuance of an after-the-fact Pump Installation Permit for the Enserch 2 Well (Well No. 6528-03) after the fine is paid, subject to standard conditions in Exhibit 7, and the following special conditions:
1. The well should not be used for drinking water unless it is properly tested and treated.
 2. If potable water is used to supply both domestic and irrigation purposes in a single system, the permittee shall eliminate cross-connections and backflow connections by physically separating potable and non-potable systems by an air gap or an approved backflow preventer, and by clearly labeling all non-potable spigots with warning signs to prevent inadvertent consumption of non-potable water.
- D. Suspend any current, pending or future applications by the applicant until the fines are paid and the applicant completes the permit process for this well.

TESTIMONY BY APPLICANT:

Tim Lui Kwan of Carlsmith Ball and attorney for Hamakua Energy Partners (HEP) briefly stated the acquisition and change in partnership of the Enserch 1 and 2 Wells by HEP. He also clarified that there was no pump installation permit when the pump was installed in June 2000. The consultants and contractors assumed that there was one. There was an error/mistake made and it was not done purposefully. He felt that there was good faith efforts made by his client's behalf. HEP had no intention to do anything illegal.

Mr. Tom Nance, consultant, stated that he was hired to work on Well 2. The construction of Well 2 overlapped the installation in Well 1 that already had a pump installation permit. Carlsmith Ball asked Mr. Nance to prepare an after-the-fact permit application for Well 2 but Mr. Nance was under the impression that there already was a permit since the pump was already in place. Because Mr. Nance did not prepare any of the permits, he had no file copies and relied on staff to assist him.

With regard to the pump being installed in Well 2, he did the test pumping according to the construction standards.

Chair Coloma-Agaran asked for a motion to enter into Executive Session because he needed to confer with counsel.

MOTION: (RICHARDS/GIRALD)

At 12:10 pm the Commission entered into Executive Session to confer with counsel on Items 6 and 7.

The meeting was resumed at 12:25 pm.

On Item 6, Commissioner Anderson said that internal confusion in HEP and its consultants is no excuse for not having a permit. The fact that the permit should have been displayed is clear reason that it was the responsibility of the applicant to have a permit. He agreed with the recommendation on Item 6.

Chair Coloma-Agaran stated also that it is very difficult for the Commission to apportion blame between owners and their contractors on these types of issues. The owners should deal with on a professional basis, the contractors they hire to do the work.

On Item 7, Commissioner Anderson made a motion to accept staff's recommendation, however, adjust the penalty by eliminating the repeat violation component of the penalty. Under these circumstances, there was no notice of prior violation and as such the defendant would have not been aware that there was a problem until the decision for Item 6 was made.

Commissioner Nishida suggested that in view of today's testimony, staff's original recommendation regarding the mitigation component be disregarded. It appears that no mistake was made on the applicant's part, but rather it was intentional. So then the fine would be \$14,000.

Commissioner Anderson accepted Commissioner Nishida's recommendation and amended his motion to eliminate the mitigation component of the penalty along with the assessment for the repeat violations.

MOTION: (ANDERSON & NISHIDA/GIRALD)
To approve the submittal as amended.
UNANIMOUSLY APPROVED AS AMENDED.

Tim Lui Kwan orally requested a contested case hearing.

This meeting was adjourned at 12:32 pm.

Respectfully submitted,

FAITH F. CHING
Secretary

APPROVED AS SUBMITTED:

LINNEL T. NISHIOKA
Deputy Director